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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

HERMOSA TERRACE LIMITED
et al.,

Plaintiffs and Appellants,

v.

TORREY PINES PROPERTY
MANAGEMENT, INC.,

Defendant and Respondent.

D055020

(Super. Ct. No. GIC878181)

APPEAL from a judgment of the Superior Court of San Diego County,

David B. Oberholtzer, Judge. Affirmed.

Plaintiffs, owners of four apartment complexes in San Diego, sued their property management company, Torrey Pines Property Management, Inc. (Torrey Pines), for breach of contract, breach of fiduciary duty, conversion and for an accounting. After a bench trial, the trial court found in favor of Torrey Pines on all claims. Plaintiffs appeal, contending the trial court misconstrued the governing

agreement and erroneously concluded that Torrey Pines owed them no fiduciary duty. They also assert the trial court abused its discretion by not ordering an accounting, thereby preventing them from proving their conversion cause of action. We reject Plaintiffs' contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are three limited liability companies (Hermosa Terrace Limited, Casa Del Norte and Casa Del Sur), and four individuals (Robert A. Collins, Harry A. Collins, and Jeffrey J. and Mary Jan Fee) acting as trustees of the family trusts which hold interests in the limited liability companies. The John Collins Company (JCC), a real estate firm owned by John Collins, brother of Robert and Harry, managed the apartment complexes for Plaintiffs. JCC employed its own staff of individuals to provide, among other things, management and maintenance services to its clients. When John was killed in an aircraft accident, his widow, Sandy Collins, decided to sell JCC's management portfolio to Torrey Pines.

The Purchase and Sale Agreement (the Purchase Agreement) specified that Torrey Pines would pay Sandy 20 percent of the monthly receipts from JCC's former customers for five years. Torrey Pines also agreed to hire all of JCC's employees, most of whom were maintenance workers. The Purchase Agreement provided that Torrey Pines would be assigned all of JCC's property management agreements, except the four agreements pertaining to Plaintiffs' apartment complexes.

In September 2004, Plaintiffs entered into new property management agreements with Torrey Pines for their four apartment complexes. Each complex

had its own property management agreement, but the agreements were identical except for the name of the property owner. The terms of these property management agreements (collectively referred to as the Management Agreement) are at issue in this action. The Management Agreement varied only slightly from the superseded JCC management contract. In exchange for Torrey Pines' performance of its obligations under the Management Agreement, Plaintiffs agreed to pay it a monthly fee equal to 4 percent of the rent and other income that Torrey Pines collected from the complexes.

Before Torrey Pines acquired JCC, it did not have an "in house" maintenance crew because of the additional costs involved in managing more employees. After Torrey Pines acquired the JCC management contracts, it used JCC's bookkeeper and software for about six months to provide statements to JCC's former clients. Lawrence Crandall, the owner and operator of Torrey Pines, then realized that JCC did not have an appropriate plan in place to address "labor burden," and that using JCC's approach was costing Torrey Pines money. In April 2005, Crandall decided to change the billing format to add a labor burden to the hourly rates for the maintenance workers at the properties belonging to JCC's former clients to cover Torrey Pines' overhead expenses. To calculate the labor burden, Torrey Pines multiplied or "burdened" the specific hours worked by a maintenance employee by a specific factor to cover its overhead.

In April 2006, the Plaintiffs complained to Torrey Pines about the change. William Brehm, vice-president of Torrey Pines and the individual responsible for

supervising Plaintiffs' properties, met with some of the individual plaintiffs in June 2006 to explain the change and provide them with alternatives, such as Plaintiffs using only independent contractors or having Torrey Pines hire a group of maintenance people to work at Plaintiffs' properties and giving that group a separate workers' compensation policy. Brehm left the meeting "confused," because Plaintiffs did not choose an alternative.

In March 2007, without terminating the Management Agreement, Plaintiffs filed this action against Torrey Pines alleging that it breached the Management Agreement and its fiduciary duty by deducting from their accounts estimated overhead expenses, rather than actual expenses. Plaintiffs claim that Torrey Pines converted these funds and that they are entitled to an accounting to determine the amount converted.

The trial court heard the matter and found in favor of Torrey Pines on all claims. The court noted that, although the Plaintiffs presented evidence regarding the meaning of the terms of the contract, the Management Agreement contained an integration clause. Thus, it did not rely "on the parol evidence overmuch to interpret the contract." The trial court found that the plain language of the Management Agreement allowed Torrey Pines to charge Plaintiffs for all expenses it incurred in supervising employees reasonably required to operate the Plaintiffs' properties. The Management Agreement also required Plaintiffs to pay all operating expenses, and did not require Torrey Pines to obtain Plaintiffs' approval before it added a labor burden or reimbursed itself from Plaintiffs' accounts. The

trial court found that Torrey Pines properly estimated and allocated a portion of its office overhead and managers' salaries to the reimbursable maintenance costs. It also found that the Management Agreement did not prohibit Torrey Pines from adding a margin to make a profit on the maintenance crew. The court entered a judgment in favor of Torrey Pines, and Plaintiffs timely appealed.

DISCUSSION

I. Legal Principles

The goal of contract interpretation is to ascertain the parties' mutual intent at the time of contracting. (Civ. Code, § 1636.) The mutual intent of the parties is determined by the words used in the agreement, which are to be understood in their ordinary and popular sense. (Civ. Code, § 1644.) Mutual intention is determined by objective manifestations of the parties' intent including the surrounding circumstances under which the parties entered into the contract, the object, nature and subject matter of the contract, and the subsequent conduct of the parties. (*Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912 (*Morey*).)

When parties to a contract dispute the meaning of contract terms, "[t]he decision whether to admit parol evidence involves a two-step process. First, the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine 'ambiguity,' i.e., whether the language is 'reasonably susceptible' to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is 'reasonably susceptible' to the interpretation urged, the extrinsic evidence is then admitted to

aid in the second step - interpreting the contract." (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165 (*Winet*)). "[I]t is reversible error for a trial court to refuse to consider such extrinsic evidence on the basis of the trial court's own conclusion that the language of the contract appears to be clear and unambiguous on its face. Even if a contract appears unambiguous on its face, a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible. [Citations.]" (*Morey, supra*, 64 Cal.App.4th at p. 912.)

The trial court's ruling on the threshold question of ambiguity is a question of law subject to our independent review. (*Winet, supra*, 4 Cal.App.4th at p. 1165.) Interpretation of the contract also presents a question of law when the competent extrinsic evidence is not conflicting (*id.* at pp. 1165-1166); however, when interpretation of the contract turns on the credibility of conflicting extrinsic evidence, the trier of fact must resolve the conflict in the evidence and we will uphold any reasonable construction of the contract by the trial court. (*Morey, supra*, 64 Cal.App.4th at pp. 912-913.)

II. Analysis

A. Alleged Judicial Bias

Plaintiffs contend the trial court based the judgment on its own personal experience, not the law or the evidence. They cite to a portion of the reporter's transcript claiming the trial court was biased by an inappropriate business model, and before it had heard any evidence, improperly took the position that Torrey

Pines was legally entitled to withdraw from Plaintiffs' accounts whatever was necessary to make its maintenance crew profitable.

Plaintiffs, however, have not provided us with *any* authority by which we can assess the trial court's conduct. We are not required to consider arguments which are not supported by citation to authority and may treat the point as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Nonetheless, in the interest of justice, we exercise our discretion to disregard the noncompliance with appellate rules and review Plaintiffs' claim on its merits. (Cal. Rules of Court, rule 8.204(e)(2)(C).)

All litigants have "a due process right to an impartial trial judge under the state and federal Constitutions." (*People v. Guerra* (2006) 37 Cal.4th 1067, 1111.) When reviewing a charge of bias, "'the litigants' necessarily partisan views should not provide the applicable frame of reference.' [Citations.]" (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724, citations omitted.) The conduct of a fair trial "often . . . requires an expression of the conclusions of the trial judge up to the moment, in order that counsel may be advised what course to chart," and do not necessarily support an inference that the judge's mind is closed to further evidence and argument. (*Gary v. Avery* (1960) 178 Cal.App.2d 574, 579.)

Plaintiffs claim the trial court prejudged this matter based on comments it made before hearing any evidence. We have scrutinized that portion of the record

and have failed to identify a single instance of the trial court's conduct that suggests bias.

Trial commenced with counsel and the court addressing preliminary and housekeeping matters. The trial court indicated that it had read both briefs, and noted that the case presented a question of law regarding interpretation of the Management Agreement. Both counsel agreed with the trial court's assessment. Counsel and the court discussed application of the parol evidence rule and particular provisions of the Management Agreement.

Plaintiffs' counsel then conversed with the court, providing his view of the matters in dispute, with the court commenting on counsel's argument and asking questions. At one point, the court analogized the matter to a law firm adding the overhead costs of the firm to the associate's hourly rates. Plaintiffs' counsel explained to the court why the analogy was inappropriate. The trial court gave defense counsel time to comment on the case, and interrupted counsel to ask questions. The court then took a recess to conduct legal research before it ruled on evidentiary matters.

The record fails to show either bias or prejudice by the trial court. Rather, the court used the parties' informal opening statements as an opportunity to understand the respective positions of both parties. To the extent the trial court expressed any opinion regarding the case it did so to assist counsel in developing their respective arguments. (*Kreling v. Superior Court* (1944) 25 Cal.2d 305, 310-311 ["It is well settled in this state that the expressions of opinion uttered by a

judge, in what he conceives to be a discharge of his official duties, are not evidence of bias or prejudice"].) Although the trial court ultimately ruled against Plaintiffs, we see no indication that its ruling was based on anything other than its interpretation of the Management Agreement, assessment of the credibility of the witnesses and weighing of all of the evidence.

B. Breach of Contract

Plaintiffs alleged that Torrey Pines breached the Management Agreement by: (1) deducting from their accounts, without notice or authority, its purported overhead costs for maintenance workers, and funds to cover payroll expenses and payroll taxes; (2) not providing an accurate accounting to demonstrate the validity of its deductions; and (3) paying itself in excess of that allowed by the Management Agreement. The trial court rejected these contentions by finding in Torrey Pines' favor on Plaintiffs' breach of contract claim. In doing so, the trial court interpreted paragraph 2, subsections (b), (e), and (h) of the Management Agreement. Accordingly, we set forth these provisions, and examine them in conjunction with the trial court's findings and Plaintiffs' contentions.

1. Provisions of the Management Agreement

Paragraph two of the Management Agreement directed Torrey Pines to:

"(b) . . . [E]stablish a separate individual account apart from [Torrey Pines'] corporate accounts for [each of the four complexes]. . . . From Owner's Operating account [Torrey Pines] shall:

"i) Pay all operating expenses and such other expenses as may be authorized by Owner.

".....

"iii) Reimburse [Torrey Pines] for all expenses paid on behalf of Owner as authorized by Owner.

".....

"(e) [Torrey Pines] shall [have] the authority to hire, supervise and terminate all independent contractors and property employees, if any, reasonably required in the operation of said property including Resident Managers. Any such employees shall be the employee of [Torrey Pines] and all expenses incurred by [Torrey Pines] resulting from said employment shall be reimbursed by Owner and paid through the Owner's operating account. [Torrey Pines] shall use its best efforts to minimize those costs. All savings received by [Torrey Pines] due to the efficient management of [Torrey Pines], excluding future worker's compensation dividends to be received, shall be passed on to the Owner.

".....

"(h) [Torrey Pines] shall maintain accurate records of all monies received and disbursed in connection with its management of the property and said records shall be open for inspection by Owner at all reasonable times. By the 20th day of each month, [Torrey Pines] shall furnish Owner with a statement of all receipts and disbursements from the operation of the Premises during the previous month together with supporting vouchers. [Torrey Pines] shall deliver paid voucher file or copies to Owner for his review with monthly statements. . . . [Torrey Pines] shall retain original paid voucher file for a minimum of seven (7) years commencing with the commencement date of this Agreement"

2. The Management Agreement Authorized Torrey Pines to Recover its Overhead Expenses

Interpreting paragraph 2, subsections (b)(i) and (b)(iii) of the Management Agreement, the trial court concluded that Torrey Pines could withdraw payment of

its own operating expenses from Plaintiffs' accounts, including a burden on labor, without Plaintiffs' approval. The trial court also noted that paragraph 2(e) of the Management Agreement addressed the cost of labor, and concluded that its "plain meaning" allowed Torrey Pines to recover all the expenses it incurred in supervising employees reasonably required to operate the property, but that Torrey Pines needed to use its best efforts to minimize such costs and pass any savings to Plaintiffs.

Plaintiffs claim the trial court erred when it concluded, as a matter of law, that Torrey Pines could reimburse itself for employment-related expenses without their authorization. They claim the specific phrase "other expenses as may be authorized by Owner" located in paragraph 2(b)(i) is inconsistent with the phrase "all expenses incurred by [Torrey Pines]" located in paragraph 2(e). Accordingly, they assert the former phrase controls, and that Torrey Pines required their approval before it could reimburse itself for employment-related expenses.

As Plaintiffs correctly assert, in determining the intent of the parties, "when a general and [a] particular provision are inconsistent, the latter is paramount to the former." (Code Civ. Proc., § 1859.) We disagree, however, that the phrases isolated from paragraphs 2(b)(i) and 2(e) are inconsistent.

Any contract must be construed as a whole, with the various individual provisions interpreted together so as to give effect to all, if reasonably possible or practicable. (Civ. Code, § 1641; Code Civ. Proc., § 1858.) Here, the trial court correctly concluded that the plain language of paragraph 2(e) allowed Torrey Pines to

pay itself out of Plaintiffs' operating account for all expenses it incurred supervising employees reasonably required to operate Plaintiffs' property. Similarly, the plain language of paragraph 2(b)(i) allowed Torrey Pines to "[p]ay all operating expenses and such other expenses as may be authorized by Owner" directly from Plaintiffs' operating account. Thus, paragraphs 2(e) and 2(b)(i) are not inconsistent.

Moreover, the trial court correctly used the last antecedent rule of construction to interpret paragraph 2(b)(i). The last antecedent rule applies to the construction of statutes and contracts. (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 529.) It provides that ""qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote." [Citation.]" (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.) Under this rule, the clause "as may be authorized by Owner" is a limitation only to "such other expenses," and the term "all operating expenses" stands alone.

The trial court also rejected Plaintiffs' argument that paragraph 2(b)(iii) of the Management Agreement required Torrey Pines to obtain Plaintiffs' approval before it could burden the maintenance labor rates with its overhead expenses. Paragraph 2(b)(iii) allowed Torrey Pines to reimburse itself for "all expenses *paid on behalf of Owner* as authorized by Owner" directly from Plaintiffs' operating account. (Italics added.) However, paragraph 2(e) specified that employees required to operate the property work for Torrey Pines, not Plaintiffs. Given this provision, Plaintiffs do not explain how Torrey Pines' overhead expenses in hiring employees constituted an

expense that Torrey Pines paid on Plaintiffs' behalf. Rather, these overhead expenses belonged to Torrey Pines, not Plaintiffs.

3. Torrey Pines Properly Allocated its Overhead Expenses

a. The Trial Court's Findings

The trial court reviewed the trial testimony of Michael Collins and made several findings. Michael was one of the individuals responsible for negotiating the Management Agreement with Torrey Pines. Michael also oversaw the management of Plaintiffs' properties in his capacity as an employee of the Robert A. Collins Company, a real estate investment company.

The trial court found that Michael incorrectly asserted that Torrey Pines' actual expenses did not include office and overhead attributable to the maintenance crew. The court noted that "[n]othing in the [Management Agreement] compel[ed] Torrey Pines to absorb these additional costs as part of its agreement to hire [JCC's] . . . employees, nor would it be the right thing." The trial court rejected Michael's testimony that it was not appropriate for Torrey Pines to include a profit margin on maintenance. The court noted that Michael could not explain why Torrey Pines would take on the burden of JCC's employees if it could have earned the same amount under the Management Agreement without this burden.

The trial court found that paragraph 2(h) of the Management Agreement required Torrey Pines to keep accurate records and provide supporting invoices to Plaintiffs. It concluded that such records included the number of maintenance hours for each property and the attendant labor cost, but not "copies of bills for

insurance, tools, equipment, postage, human resource expenses, etc." because these expenses were "internal costs going to the profit and loss of Torrey Pines, not the profit and loss of [Plaintiffs'] properties." The court also found that burdening labor with overhead was a common practice, and concluded that Torrey Pines properly allocated a portion of its office overhead and managers' salaries to its reimbursable maintenance costs. It specifically found "no fault in either the method or the result of those estimates."

b. Analysis

Plaintiffs do not challenge the sufficiency of the evidence supporting the trial court's factual findings. Instead, they contend the trial court erroneously interpreted the Management Agreement as allowing Torrey Pines to deduct estimated expenses from Plaintiffs' trust accounts, rather than "actual" expenses. They argue that the ordinary meaning of the word "expense" is an actual expense, not an estimated expense. They claim that the word "actual" should be implied when reading the Management Agreement.

The Management Agreement gave Torrey Pines the authority to supervise all property employees, and specified that they would reimburse Torrey Pines for "all expenses incurred by [Torrey Pines] resulting from said employment" through their operating accounts. Significantly, when JCC managed Plaintiffs' properties, Plaintiffs paid a portion of JCC's monthly overhead expenses. Thus, Plaintiffs cannot claim that the term "expenses" could not include Torrey Pines' overhead expenses.

Testimony regarding the transition from JCC to Torrey Pines is instructive. JCC used a time consuming method to track monthly employee related expenses on a cash basis. When Torrey Pines acquired JCC's management portfolio, it used JCC's billing format until it realized the impracticality of the methodology. Torrey Pines changed its billing format to calculate overhead expenses through historical data, and then applied the overhead as a burden on the hourly maintenance labor rates. As Crandall explained, all of the expenses that Torrey Pines took into account to calculate the overhead burden were "actual" expenses that Torrey Pines had incurred. Although Plaintiffs disputed some of the line items that Torrey Pines took into account to calculate the overhead burden, it cited no evidence showing that Torrey Pines "made up" or did not actually incur any of the expenses included in the labor burden calculation. Rather, the trial court found that Torrey Pines had properly estimated its overhead expenses, and Plaintiffs did not challenge this finding.

Plaintiffs contend the trial court improperly interpreted the Management Agreement as allowing Torrey Pines to take out of their operating accounts any amount sufficient to insure it would break even. The trial court, however, made no such finding in its statement of decision. Rather, the trial court rejected Michael's assertion that the Management Agreement prohibited Torrey Pines from adding a margin to make a profit on the maintenance crew. In any event, this argument is largely academic as the evidence presented at trial revealed that the maintenance division was not profitable, and that Torrey Pines was losing money on it.

C. Breach of Fiduciary Duty

Plaintiffs claim that the trial court erred when it found that Torrey Pines owed them no fiduciary duty. They assert that under the Management Agreement Torrey Pines had a fiduciary duty to appropriately handle the money in their trust accounts.

The court's initial statement of decision concluded that the Management Agreement did not impose a fiduciary duty on Torrey Pines to place Plaintiffs' interests ahead of its own. In response to Plaintiffs' objections to its preliminary statement of decision, the court issued a response finding that "Torrey Pines has not breached a contract with the [Plaintiffs], nor did it breach any fiduciary duty to the [Plaintiffs]." The trial court, however, did not issue an amended statement of decision incorporating these changes. Rather, approximately two months later, it entered a judgment in favor of Torrey Pines on all causes of action, and ordered that Plaintiffs take nothing on any cause of action.

We construe the trial court's written response to Plaintiffs' objections as an amendment to its statement of decision. (*Phillips v. Phillips* (1953) 41 Cal.2d 869, 874 [trial court may at any time before entry of judgment amend or change its findings of fact]; *Bay World Trading, Ltd. v. Nebraska Beef, Inc.* (2002) 101 Cal.App.4th 135, 141 [Code of Civil Procedure section 632 and California Rules of Court, rule 3.1590 (former rule 232) "contemplate that a court may amend its statement of decision after it receives objections from affected parties"].) Implicit in the court's amended finding that Torrey Pines did not breach a fiduciary duty is a

finding that a fiduciary relationship existed between the parties, a conclusion that Torrey Pines did not contest on appeal, and with which we agree.

Plaintiffs also claim that the trial court applied the wrong standard in judging Torrey Pines' conduct and, as a result, improperly concluded that Torrey Pines' self-dealing was an accepted business practice. The trial court, however, concluded that Torrey Pines did not breach the Management Agreement, and used the proper method to estimate its overhead expenses. Because the record does not support Plaintiffs' conclusion that Torrey Pines engaged in improper self-dealing, they have not shown that Torrey Pines breached a fiduciary duty under any standard.

D. Accounting

Plaintiffs alleged that they were entitled to an accounting of funds in their operating accounts with Torrey Pines, and that they had no adequate remedy at law. The trial court concluded that even if the Management Agreement had been breached, nothing compelled the intervention of equity. Plaintiffs assert the trial court abused its discretion as a matter of law when it concluded that they were not entitled to an accounting. We disagree.

Although Plaintiffs alleged a breach of the provision in the Management Agreement that required Torrey Pines to keep accurate records, the trial court was correct in impliedly rejecting this claim when it found no breach of contract or fiduciary duty. Because Plaintiffs' accounting claim is derivative of their other claims, no accounting was necessary. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 593-594 ["defendant has proven it engaged in no misconduct

and, as a result, plaintiffs have no right to an accounting"']); *Caldwell v. Caldwell* (1947) 80 Cal.App.2d 378, 382-383 [absence of misconduct by defendants warranted nonsuit as to plaintiff's accounting cause of action].)

E. Conversion

The trial court noted in its statement of decision that Plaintiffs based their conversion claim on Torrey Pines reimbursing itself from their operating accounts for the disputed labor burden, and that Plaintiffs sought damages according to proof. The court concluded that the conversion claim failed because Plaintiffs did not seek a sum certain. (*Haigler v. Donnelly* (1941) 18 Cal.2d 674 (*Haigler*) [money cannot be the subject of a conversion action unless a specific sum capable of identification is involved].)

Plaintiffs acknowledge that *Haigler* would ordinarily control, but assert the *Haigler* rule should not apply here because the trial court refused to order an accounting. Thus, the court prevented them from proving the specific amount of money wrongfully taken from their operating accounts.

We concluded that the trial court properly rejected Plaintiffs' claim for an accounting because it was derivative of their other claims. (*Ante*, part II.D.) Plaintiffs cannot use the lack of an accounting to avoid application of the *Haigler* rule where the underlying claims lack merit. Additionally, "[c]onversion is the *wrongful* exercise of dominion over the property of another." (*Burlesci v. Peterson* (1998) 68 Cal.App.4th 1062, 1066, italics added.) The trial court concluded that Torrey Pines used a proper method to estimate its overhead. Thus,

Plaintiffs' conversion claim also fails because they did not prove that Torrey Pines exercised wrongful control over the funds in their accounts. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18-19 [we will affirm a judgment or order that is correct on any applicable theory of law, even if not the theory relied on by the trial court].)

F. Alleged Inconsistent Findings

The statement of decision states that Plaintiffs "shall take nothing by way of their complaint" and "each party is to bear the cost of their lawyers." The amendment to the statement of decision (see *ante*, part II.C.), states that Torrey Pines did not breach the Management Agreement or its fiduciary duty to Plaintiffs. However, the amendment to the statement of decision also states that, "The court finds Torrey Pines' legal fees to defend this lawsuit are not an expense or reimbursable cost under its Agreements with [Plaintiffs]. Those funds are to be re-deposited into [Plaintiffs'] account, plus 10% simple interest." The trial court made this latter amendment to the statement of decision in response to Plaintiffs' objections asking it to make findings on whether Torrey Pines: (1) charged its legal fees for this action to its maintenance division and (2) if it did charge its legal fees, whether this action constituted a breach of contract or breach of fiduciary duty.

Plaintiffs claim the trial court made inconsistent findings, asserting it necessarily determined that Torrey Pines violated the Management Agreement when it ordered Torrey Pines to restore its defense costs to Plaintiffs' accounts.

Alternatively, Plaintiffs claim that, at a minimum, they are entitled to their costs as the prevailing party.

Again, Plaintiffs have not provided us with any authority by which we are to assess the trial court's conduct. (*Ante*, part II.A.) Although we may disregard this noncompliance with the appellate rules, we cannot ignore Plaintiffs' obligation to bring any ambiguities and omissions in the statement of decision to the trial court's attention. (Code Civ. Proc., § 634.) Where, as here, the party challenging the statement of decision has failed to bring alleged omissions or ambiguities to the trial court's attention, we will infer that the trial court made implied factual findings favorable to the prevailing party on all issues necessary to support the judgment, including the omitted or ambiguously resolved issues. (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 59-60.) We review the implied factual findings under the substantial evidence standard. (*Id.* at p. 60.) Additionally, it is a well-established principle that the findings of a trial court should be liberally construed and any inconsistency therein so resolved as to uphold rather than defeat its judgment. (*Woodbine v. Van Horn* (1946) 29 Cal.2d 95, 109; *Ensele v. Jolley* (1922) 188 Cal. 297, 303.)

Here, the trial court entered judgment in favor of Torrey Pines, stating that Plaintiffs were to take *nothing* on any of their claims. To the extent the trial court's amendment to the statement of decision indicates that Torrey Pines is to redeposit into Plaintiffs' operating accounts "any funds" it removed to pay its legal fees, we must infer that the trial court found that Torrey Pines did not remove any

funds because is specifically found no breach of contract or breach of fiduciary duty.

Substantial evidence supports this implied finding. Crandall testified that the maintenance division paid the legal fees that Torrey Pines incurred to defend this action. When asked whether Plaintiffs would eventually be paying Torrey Pines' legal fees if Torrey Pines increased the burdened labor rate, Crandall testified that would only be the case if he increased the labor burden. Plaintiffs, however, cited no evidence to show that Torrey Pines took this action. Accordingly, we conclude that the statement of decision does not include contradictory or irreconcilable findings.

DISPOSITION

The judgment is affirmed. Defendant is to recover its costs on appeal.

McINTYRE, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.